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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

FILED
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 C.A. NO: 05cv11799 JLT
 APR 30 2005

CHERI GILLESPIE,
 ADMINISTRATRIX OF THE
 ESTATE OF KAREN SILEVICZ
 Plaintiff
 vs.
 RICHARD L. PAULSON, M.D.
 Defendant

U.S. DISTRICT COURT
 DISTRICT OF MASS.
**COMPLAINT AND DEMAND
 FOR TRIAL BY JURY**

05cv11799 JLT

MAGISTRATE JUDGE Roule

JURISDICTION OVER THE SUBJECT MATTER

Jurisdiction over the subject matter is conferred by 28 U.S.C. § 1332, Diversity of Citizenship. The plaintiff represents that the parties to this action are citizens of different states viz the deceased, now represented by plaintiff estate was a resident of Connecticut and the defendant being a resident of the Commonwealth of Massachusetts. The amount in controversy exceeds \$75,000.

NATURE OF THE CLAIM

This is an action for medical negligence care on the part of the defendant, RICHARD L. PAULSON, M.D. whose conduct deviated from the standard of acceptable medical practice and to a reasonable medical certainty caused the plaintiff to sustain conscious pain and suffering as well as severe and permanent injuries from which she died in February, 2003.

THE PARTIES

1. The Plaintiff, Cheri Gillespie, who is the Administratrix of THE ESTATE OF KAREN SILEVICZ, resides at 9 Kelly Ct, Sandy Hook, Fairfield, CT.

2. The Defendant, Richard L. Paulson, M.D. is a physician duly licensed to practice medicine in the Commonwealth of Massachusetts with a usual place of business at One Pearl St., Suite 2700, Brockton, MA 02301.

ALLEGATIONS OF FACT AND DEMAND FOR RELIEF

3. Ms. Cheri Gillespie was appointed the administratrix of the estate of Karen Silevicz in the Plymouth County Probate Court on July 12, 2005.
4. The Plaintiff, Karen Silevicz was under the care of her physician, Dr. Richard Paulson.
5. In February, 2001, the Plaintiff, who had a history of mixed chronic obstructive pulmonary disease and smoking went to see Dr. Coutu in February 2001 at which time she had a chest x-ray which showed chronic pulmonary changes however, there was no evidence of acute pulmonary disease.
6. At some point, a right retroareolar lump was discovered in her breast and multiple mammographies were performed in May, 2001 with a breast ultrasound which revealed two small cysts in retroareolar region of the right breast.
7. In July, 2001 she saw the Defendant, Richard L. Paulson, M.D., who in a letter to Dr. Coutu, stated that this was a follow-up letter on the plaintiff, and that he would arrange for her to undergo right breast biopsy in the near future."
8. A pre-operative chest x-ray was performed at Caritas Good Samaritan Medical Center on July 17, 2001, which showed a 3 cm right lung base density possibly pleural based. A CT scan was recommended to further evaluate this finding.

9. The subject report was faxed to the defendant on Sunday, July 15, 2001 at 12:00 p.m. At the bottom of the report there is language stating "Arrange CT chest, attention RLP 7/16, signature RLP" and a partially legible note 7/16/01 in different handwriting stating "RLP notified, will book CT" and the remainder is illegible.
10. From that point, no further evaluation of the chest lesion was performed although an excision biopsy of the right breast mass was undertaken on July 17, 2001. Surgical pathology biopsy showed benign breast tissue consistent with fibrocystic changes.
11. A review of the Defendant's records reveals that there was an abnormal pre-operative chest x-ray faxed to his office on July 15, 2001. The records further state: "Patient having breast biopsy on July 17, 2001, RLP notified. Chest CT advised, not scheduled at present. Signed M.J. A post-op phone call on July 18, 2001, doing well, wound care reviewed."
12. On July 11, 2002, the Plaintiff was seen next by Dr. Coutu for an annual examination. She had not been seen in fifteen months. A routine followup colonoscopy was advised. A 3-4 cm cyst in the right breast was noted and a followup mammography and followup visit with the Defendant was advised.
13. On October 17, 2002, the Plaintiff presented to the Emergency Room at Caritas Good Samaritan Hospital with four days of frontal facial headaches, different from migraines. The Plaintiff was determined to have stage IV undifferentiated carcinoma of the lung, non-small cell type with metastases to the brain.
14. The Plaintiff expired from the disease in February, 2003.

COUNT I NEGLIGENCE, CONSCIOUS PAIN & SUFFERING AGAINST THE
DEFENDANT, RICHARD L. PAULSON , M.D.

15. The Plaintiff incorporates by reference paragraphs 1 through 14 and realleges the same as if stated herein.
16. The Defendant breached the standard of care by failing to follow up an abnormal chest x-ray. Had the follow-up been undertaken in July, 2001 a curative attempt could have been undertaken and, given the fact that there is a significant survival during stage I and stage II, even stage III, of non-small cell lung cancer, the Plaintiff's chances for survival would have been increased to a reasonable medical certainty.
17. As a result of the failure to act, the Plaintiff's lung carcinoma metastasized to the brain and in February, 2003, she died; however, prior to doing so, she incurred significant conscious pain and suffering.

WHEREFORE, the Plaintiff, the Estate of KAREN SILEVICZ demands judgment against the Defendant, RICHARD L. PAULSON, M.D. in an amount that will adequately compensate her for her serious injuries, significant medical expenses and great pain of body and mind, specifically, conscious pain and suffering, plus costs, interest and attorney's fees and such other relief as this court deems just and proper.

COUNT II AGAINST RICHARD L. PAULSON, M.D.
WRONGFUL DEATH (GL. 229, Section 2)

18. Plaintiff Cheri Gillepie, the executor and representative of the Estate of Karen Silevicz realleges the allegations of Paragraphs 1 through 17 supra, and incorporates them by reference as if originally stated herein.
19. Vitold M. Silevicz, Jr. is the next of kin or spouse of the decedent.
20. The Defendant, by his negligence caused the death of Karen Silevicz through, inter alia, breach of the standard of care by failing to follow up an abnormal chest x-ray. As a direct and proximate result of the Defendant's conduct, Karen Silevicz experienced conscious pain and suffering and eventually, death.
21. As the decedent passed away on February 4, 2003, this action is timely and brought within the two (2) years since the date of death.

WHEREFORE, the Plaintiff, Cheri Gillepie on behalf of the ESTATE OF KAREN SILEVICZ respectfully demands judgment for WRONGFUL DEATH against the Defendant, RICHARD L. PAULSON, M.D. and requests that this Court award damages pursuant to G.L.c. 229, Section 2, with interest, and all such other relief this Court deems just and equitable.

**THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY UPON ALL ISSUES
HEREIN.**

The Plaintiff,
By her Attorney,



THOMAS A. KENEFICK, III, ESQ.

BBO# 267620

Law Office of Thomas A. Kenefick, III
73 Chestnut St.
Springfield, MA 01103
413-734-7000

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules or court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Cherie Gillespie, Administratrix of the Estate of Karen Silevicz

DEFENDANTS

Richard L. Paulson, MD

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fairfield City, CT.
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Plymouth City, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas A. Kenefick, III, Esq.
73 Chestnut St.
Springfield, MA 01103

ATTORNEYS (IF KNOWN)

05 11799 JLT

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | Federal Question
(U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | X 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

- | | PTF | DEF | PTF | DEF | |
|---|-------------------------------------|-------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 122 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Delinquent Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input checked="" type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 871 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Asped 28 USC 158 <input type="checkbox"/> 423 Windbreak 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tint Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civi Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 851 HIA (1958) <input type="checkbox"/> 862 Black Lung (223) <input type="checkbox"/> 863 DOLC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 PSL (405(g))
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|--|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Recreated | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|--|--|---|--|

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY
This case involves diversity of citizenship 28 U.S.C. sec. 1332 and involves personal injury/medical malpractice arising out of the defendant's deviation from the standard of acceptable medical practice.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

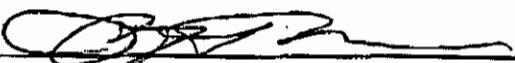
VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Cherie Gillespie, Administratrix
of the Estate of Karen Silevitz v. Richard L. Paulson, M.D.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

MA DISTRICT COURT
DISTRICT OF MASS.

* Also complete AO 120 or AO 121
for patent, trademark or copyright cases

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3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)). Plymouth Probate and Family Court Docket #03P1961-AZ1, See also AD1

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC

INTEREST? (SEE 28 USC 2403) YES NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC

2284? YES NO

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL DIVISION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER

COUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO

OR IN THE WESTERN DIVISION (BERKSHIRE, FRANKLIN, HAMDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)).

YES NO

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN DIVISIONS OF THE DISTRICT?

YES NO

(a) IF YES, IN WHICH DIVISION DOES THE PLAINTIFF RESIDE? _____

9. IN WHICH DIVISION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Plymouth County

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE

CENTRAL DIVISION; YES NO OR WESTERN DIVISION; YES NO

11. ALTERNATIVE DISPUTE RESOLUTION - IS THIS CASE SUITABLE FOR ADR? IF SO, BY WHICH ADR?

EARLY NEUTRAL EVALUATION MEDIATION SUMMARY JURY/BENCH TRIAL

MINI-TRIAL OTHER

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas A. Kenefick, III, Esq.

ADDRESS 73 Chestnut St., Springfield, MA 01103

TELEPHONE NO. 413-734-7000